

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                       |   |                     |
|---------------------------------------|---|---------------------|
| In the Matter of                      | ) |                     |
|                                       | ) |                     |
| Petition of Mid-Rivers Telephone      | ) |                     |
| Cooperative, Inc. for order Declaring | ) | WC Docket No. 02-78 |
| It to be an Incumbent Local Exchange  | ) |                     |
| Carrier in Terry, Montana Pursuant to | ) |                     |
| Section 251(h)(2)                     | ) |                     |

**REPLY COMMENTS OF  
SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY, INC.**

South Slope Cooperative Telephone Company, Inc. (South Slope), by its attorneys, hereby files reply comments in the above-referenced proceeding. Specifically, South Slope supports the comments filed by the National Telecommunications Cooperative Association (NTCA), the Rural Independent Competitive Alliance (RICA) and AT&T Corp. (AT&T), to the extent discussed herein, and opposes the comments filed by Iowa Telecommunications Services, Inc. (Iowa Telecom).

The Commission asked for comment on a number of issues in connection with the request by Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) for an order declaring it to be an incumbent local exchange carrier in Terry, Montana including, how to define the relevant “area” for the purposes of section 251(h)(2)(A). The Commission asked for comment on its tentative conclusion that Mid-Rivers has “substantially replaced” Qwest for purposes of satisfying section 251(h)(2)(B) because it serves 93 percent of the subscribers of the Terry exchange. The Commission also asked for comment on whether Mid-Rivers has met the public interest requirement, including the effect of potential increases in universal service and access rates in the public interest determination.

South Slope supports the comments of NTCA on these issues. Specifically, NTCA demonstrates that use of the Terry exchange as the relevant “area” for purposes of section 251(h)(2)(A) is consistent with the remainder of section 251.<sup>1</sup> Further, the plain language of the statute does not require the use of a larger area, such as the incumbent LEC’s study area or the entire operating area of a Bell Operating Company. In fact, as demonstrated by RICA, if Congress had intended “area” to mean “study area or “operating entity,” it could have used such terms. In addition, as noted by RICA, if “area” is read to mean “study area” or “operating entity,” the probable result is that the first two conditions of Section 251(h)(2) will never be met.<sup>2</sup> Thus, not only does the Commission have the discretion to find that “area” means “exchange,” it is a more logical interpretation of Section 251 of the Act.

South Slope also supports the comments of NTCA that Mid-Rivers has shown that it occupies a “comparable” market position and that it has “substantially replaced” the incumbent local exchange carrier. South Slope agrees that the relevant factors that should be considered in assessing whether this requirement has been met include whether the petitioning carrier has constructed outside plant facilities in the exchange and provides local exchange and other telecommunications services to a substantial percentage of the subscribers in the exchange. Although Mid-Rivers provides service to 93 percent of the subscribers in the Terry exchange, which the Commission has tentatively concluded is “substantial,” the Commission should find that capturing less than 93 percent of subscribers also could be “substantial.” For example, South Slope has captured 82, 85 and 86 percent of the customers in the exchanges in which it seeks designation as an ILEC and this should be found to be “substantial.” South Slope also

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<sup>1</sup> NTCA Comments at 2-3.

<sup>2</sup> RICA Comments at 2-3.

agrees with the comments of AT&T that to “substantially replace” an ILEC the petitioning carrier must provide wireline service.<sup>3</sup>

With respect to the public interest test, South Slope supports the comments of NTCA that the Commission can separately address its concerns about the impact on universal service and access charges in the universal service and intercarrier compensation proceedings currently pending before it.<sup>4</sup> In addition, to the extent any entity which is granted ILEC status pursuant to Section 251(h)(2) files for a waiver of the study area rules, the Commission could examine the impact on universal service and access charges during that proceeding.

South Slope opposes the comments of Iowa Telecom in which Iowa Telecom argues that the Commission should automatically forbear from enforcing section 251 with respect to the historic ILEC if another ILEC is designated. South Slope also opposes Iowa Telecom’s position that the Commission should permit an historic ILEC commenting on a Section 251(h)(2) request to petition simultaneously for reclassification of its own status and that the Commission should resolve such petitions concurrently with the Section 251(h)(2) request. Although South Slope believes that the historic ILEC is free to file for forbearance or any other relief provided by the Act, such request is not part of the Section 251(h)(2) petition filed by the petitioning carrier and there is no basis to delay grant of the Section 251(h)(2) petition. Accordingly, South Slope urges the Commission to resolve Section 251(h)(2) petitions without delay.

Finally, South Slope notes that the Commission’s NPRM only addresses the petition of Mid-Rivers. Accordingly, in order to ensure that there is no unnecessary administrative delay in considering the Section 251(h)(2) request filed by South Slope, South Slope asks the Commission to designate its Petition for rulemaking.

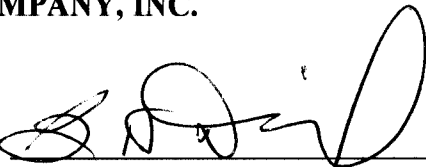
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<sup>3</sup> AT&T Comments at 5.

Based on the foregoing, South Slope asks the Commission to adopt the recommendations contained herein.

Respectfully submitted,

**SOUTH SLOPE COOPERATIVE TELEPHONE  
COMPANY, INC.**

By:  \_\_\_\_\_

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Dated: January 14, 2005

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<sup>4</sup> NTCA Comments at 3 and 5.

## CERTIFICATE OF SERVICE

I, Althea Pierce, hereby certify that, on January 14, 2005, I have caused true and correct copies of the foregoing Reply Comments of South Slope Cooperative Telephone Company, Inc. to be served on the following by U.S. mail or via e-mail as indicated:

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/s/

Althea B. Pierce